

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 EA-07 ISO-00 CAB-02 CIAE-00 COME-00

DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 L-03 PA-01

PRS-01 USIA-06 IO-10 /057 W

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R 280915Z AUG 75

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 2865

INFO AMCONSUL MONTREAL

AMEMBASSY LONDON

AMEMBASSY PARIS

LIMITED OFFICIAL USE SECTION 1 OF 2 TOKYO 12054

E.O. 11652: N/A

TAGS: EAR, JA

SUBJ: CIVAIR: NOISE LEVY

MONTREAL FOR US REP ICAO

REF: TOKYO 11398 (NOTAL)

1. SUMMARY. EMBASSY HAS BEEN INFORMED THAT GROUP OF AT LEAST 11 INTERNATIONAL AIR CARRIERS PLANS FILE JOINT LEGAL ACTION AGAINST GOJ EARLY MID-SEPTEMBER TO TEST LEGALITY NOISE LEVY. LEGAL FIRM HANDLING CASE AND TWO OF U S CARRIERS INVOLVED PAN AM AND NORTHWEST HAVE ASKED USG TO MAKE SIMULTANEOUS DIPLOMATIC APPROACH TO GOJ. REQUEST DEPARTMENT'S CONCURRENCE IN EMBASSY'S INITIATING AND PARTICIPATING IN JOINT DIPLOMATIC APPROACH. END SUMMARY.

2. ON AUGUST 27, EMBOFF VISITED BY REPS OF NW AND PAN AM AND TWO ATTORNEYS FROM LOCAL LAW FIRM OF BLAKEMORE AND MITSUKI RE GOJ NOISE LEVY TO BE IMPLEMENTED FROM SEPT. 1. ATTORNEY BROCKMAN STATED HIS FIRM RECENTLY RETAINED BY 11 INTERNATIONAL AIR CARRIERS, LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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INCLUDING PAN AM NW AND FLYING TIGER TO FILE SUIT CHALLENGING, UNDER JAPANESE DOMESTIC LAW, LEGALITY OF NEW NOISE LEVY. ATTORNEY STATED THAT CARRIERS NATURALLY CONCERNED OVER COST TO THEM OF NEW MEASURE,

THE PROBABLE IMPLEMENTATION BY OTHER FAR EAST GOVTS.
(PARTICULARLY HONG KONG) OF SIMILAR LEVIES, AND THE
FACT THAT THE UNILATERAL GOJ MEASURE
UNFORTUNATE AS ICAO COUNCIL COULD CONSIDER MULTILATERAL
APPROACH TO AIRCRAFT NOISE PROBLEM AT ITS MEETING NEXT
MONTH.

3. BROCKMAN STATED FIRM PLANS DUAL CHALLENGE TO
LEGALITY OF LEVY:

A) IMPOSITION OF THE SPECIAL CHARGE EXCEEDS THE
AUTHORITY GRANTED THE MINISTER OF TRANSPORT BY ARTICLE
11 OF THE AIRPORT ADMINISTRATIVE REGULATIONS CONTAINED
IN MOT ORDER #44 OF 1952. THIS ARTICLE GRANTS THE
MINISTRY (JCAB) AUTHORITY TO SET VARIOUS CHARGES FOR
THE USE OF PUBLIC AIRPORTS: E.G., TAKE-OFF, PARKING,
LIGHTING ETC. FEES. AS THE NEW CHARGE IS BASED ON
NOISE, NOT ACTUAL USE OF AIRPORT FACILITIES, THE MOT
DOES NOT, SO THE SUIT WILL CONTEND, HAVE THE LEGAL
AUTHORITY TO SET IT.

B) IF THE COURT RULES THE MOT HAS AUTHORITY TO LEVY
THE NOISE CHARGE, IT WILL BE CHALLENGED AS BEING
"UNEQUITABLE AND UNREASONABLE" ON THE GROUNDS THAT
MONEY PAID FOR USE OF HANEDA WILL BE CHANNLED TO
THE RELIEF OF OSAKA (CROSS-SUBSIDY). PAN AM
AND NW MAINTAIN THAT BECAUSE OF THE CROSS-SUBSIDY
SYSTEM THEY WILL PAY 17.5 TIMES AS MUCH IN SPECIAL
NOISE FEES AS THEY WOULD IF THE MONEY WERE USED TO
FINANCE NOISE ABATEMENT COSTS AT TOKYO ONLY. BROCKMAN'S
FIRM ALSO PLANS TO PRESENT AN ANALYSIS OF THE JCAB
AIRPORT DEPARTMENT'S BUDGET SHOWING THAT THE NEW LEVY
SHIFTS MUCH OF THE COST BURDEN OF MAINTAINING THE
PUBLIC AIRPORTS TO THE CARRIERS.

4. LEGAL FIRM ALSO PLANS TO INTRODUCE ARGUMENT THAT
IMPOSITION OF THE SPECIAL NOISE CHARGE ""VIOLATES THE
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INTERNATIONAL OBLIGATIONS" OF JAPAN BUT FORESEES THE
COURT'S REFUSING TO CONSIDER THIS QUESTION ON GROUNDS
IT SHOULD BE DETERMINED AT DIPLOMATIC LEVEL.

5. BROCKMAN SUMMARIZES BY REITERATING THAT THE
CARRIERS ARE MOST CONCERNED BY THE PRECEDENT BEING
SET BY THE GOJ: SINCE THE COURT CASE COULD TAKE 2-3
YEARS AND THE CARRIERS WILL BEGIN PAYING THE CHRG
FROM SEPT. 1, HE ASKED WHETHER, SIMULTANEOUSLY WITH
THE COURT ACTION, THE USG WOULD MAKE A STRONG APPROACH
TO THE GOJ ASKING THAT, AT LEAST, THE IMPLEMENTATION
OF THE NOISE LEVY BE DELAYED UNTIL THE SEPTEMBER ICAO

MEETING HAS THE CHANCE TO DEVELOP A MULTILATERAL
APPROACH TO THE NOISE PROBLEM.

6. EMBOFF STATED WE HAD ALREADY PRESENTED STRONG NOTE
ON SUBJECT TO GOJ PER DEPARTMENT INSTRUCTIONS (TOKYO
10180) AND THAT OUR PROTEST HAD APPARENTLY HAD LITTLE
EFFECT. (FONOFF REPLY HAS NOW BEEN RECEIVED AND IS
BEING TRANSLATED). EMBOFF ASKED IF OTHER GOVERNMENTS
WERE TAKING CTION.

7. BROCKMAN REPLIED THAT TOKYO REPS OF AIR INDIA,
BRITISH AIRWAYS AND CANADIAN PACIFIC PLANNED APPROACH
THEIR RESPECTIVE EMBASSIES TO REQUEST SAME TYPE DIPLOMATIC
SUPPORT SOUGHT FROM USG.

8. ACTION REQUESTED: WE BELIEVE GOJ SETTING DANGEROUS
PRECEDENT BY ESTABLISHING NOISE LEVY BASED ON THEIR

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OWN PARTICULAR METHOD OF CALCULATING NOISE LEVEL AND
AIRCRAFT WEIGHT AND THAT PAN AM AND NORTHWEST, BECAUSE
OF THEIR FLIGHT FREQUENCIES AND SIZE OF AIRCRAFT, WILL
BE ESPECIALLY HARD HIT FINANCIALLY. (THESE TWO CARRIERS
ALONE WILL SUPPOSEDLY PAY OVER 50 PERCENT OF FUNDS COLLECTED UNDER
THE NEW FEE.)

9. ALTHOUGH WE HAVE NOT YET RECEIVED TRANSLATION OF FONOFF
REPLY OUR NOTE, IT APPEARS POINT BY POINT REBUTTAL HAS
BEEN MADE. THEREFORE, BEST TACK AT THIS JUCTURE,
WOULD BE A JOINT DIPLOMATIC APPROACH TO THE GOJ. WE
PROPOSE, PROVIDING THE DEPARTMENT CONCURS, TO WORK

WITH EMBASSIES OF OTHER AFFECTED CARRIERS TO CONFIRM
OUR PROTEST TO FOLLOWS SIMULTANEOUS WITH THE FILING OF
CIVIL SUIT. (WE HAVE ALREADY INFORMALLY SOUNDED OUT
BRITISH EMBASSY ON SUCH ACTION AND THEY MAY BE WILLING
TO PARTICIPATE THOUGH THEY HAVE OTHER MORE IMPORTANT
BILATERAL DISCUSSIONS WITH JCAB COMING UP.) EMBASSY
WOULD A) REITERATE OUR CONCERN OVER THE ARBITRARY METHOD
OF COMPUTING THE FEE B) THE UNFAIRNESS OF THE CROSS-
SUBSIDY AND C) THE UNTIMELINESS OF THIS UNILATERAL GOJ
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ACTION GIVEN THE POSSIBILITY OF DEVELOPING A MULTILATERAL
APPROACH TO THE NOISE PROBLEM AT THE ICAO
COUNCIL MEETING NEXT MONTH OR THE OECD WORKING GROUP
ON NOISE POLLUTION IN NOVEMBER. (EMBOFF UNFAMILIAR
WITH ICAO COUNCIL AND OECD PROCEDURES BUT ASSUME THE
SUBJECT OF DEALING WITH AIRCRAFT NOISE COULD BE INTRO-
DUCED BY US REPS FOR MULTILATERAL DISCUSSION ON
URGENT BASIS.) WE WOULD ASK THE GOJ TO RESCIND THE
TAX AND, IF THIS NOT ACCEPTABLE, TO AT LEAST SUSPEND
IT UNTIL THE ICAO OR OECD GROUP HAS THE OPPORTUNITY TO WORK OUT A
MULTILATERAL APPROACH TO THE PROBLEM.

10. REQUEST DEPARTMENT'S CONCURRENCE IN THE ABOVE
PLUS ANY FURTHER ARGUMENTATIVE POINTS YOU FEEL WE CAN
USEFULLY MAKE. ALSO REQUEST, PROVIDED IT IN ACCORDANCE
WITH PROCEDURES, DEPARTMENT INSTRUCT US REPS ICAO
AND OECD TO RAISE SUBJECT OF AIRCRAFT NOISE AT NEXT MEETINGS
SO THAT MULTILATERAL APPROACH TOWARD SOLVING PROBLEM
CAN BE DEVELOPED.
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